

Message Text

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ORIGIN L-02

INFO OCT-01 ARA-06 IO-04 ISO-00 SSO-00 NSCE-00 USIE-00

INRE-00 CIAE-00 DODE-00 PM-03 H-01 INR-05 NSAE-00

NSC-05 PA-01 RSC-01 PRS-01 SP-02 SS-20 AF-04 EA-06

EUR-08 NEA-06 EB-04 COME-00 STR-01 CIEP-01 TRSE-00

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DRAFTED BY L:MFELDMAN

APPROVED BY L:MFELDMAN

EB/IFD/OIA - CNELLIS

EB/ITP/OT/GCP - DMORRISON

IO/CMD - RPOOLE

ARA/MEX - ESHIPPY

TR - MBRADFIELD (SUBS)

-- JWILLIS

----- 100775

O R 112316Z OCT 74

FM SECSTATE WASHDC

TO USMISSION USUN NY IMMEDIATE

INFO AMEMBASSY MEXICO

USMISSION GENEVA

C O N F I D E N T I A L STATE 225553

E.O. 11652: GDS

TAGS: EGEN, UNCTAD

SUBJECT: CHARTER OF ECONOMIC RIGHTS AND DUTIES: CERDS

REFS: (A) USUN 3935; (B) USUN 3938

1. TEXT PROPOSED REF (B) GENERALLY SATISFACTORY SUBJECT
TO THE FOLLOWING COMMENTS: WE WOULD PREFER BRILLIANTES
TEXT OF PARA. 1 RATHER THAN NEW AND AMBIGUOUS LANGUAGE
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RELATING TO "POSSESSION, USE AND DISPOSAL". WE ARE NOT

CLEAR WHAT LDCS ARE AIMING AT HERE. WITH RESPECT TO PARA. 3, WE WOULD NOT WISH TO PREJUDICE THE INVESTOR'S RIGHT TO BRING LEGAL ACTIONS IN NATIONAL COURTS OTHER THAN THOSE OF HOST STATE. THEREFORE, WE PREFER "EXHAUSTION" APPROACH OF RESOLUTION 1803. HOWEVER, WE CAN LIVE WITH LANGUAGE IN BRILLIANTES TEXT WHICH STIPULATES RIGHTS OF STATES TO REQUIRE RECOURSE RATHER THAN IMPOSING DIRECT OBLIGATION ON INVESTOR.

2. WHILE WE COULD LIVE WITH LANGUAGE "UNLAWFUL PRESSURE" IF NECESSARY TO OBTAIN AGREEMENT ON "INTERNATIONAL OBLIGATIONS" WE DO NOT BELIEVE SUCH LANGUAGE SHOULD BE PROPOSED IN A DOCUMENT EMANATING FROM THE B GROUP WHICH WILL BE ATTRIBUTED TO THE UNITED STATES.

3. WE WOULD LIKE YOU TO CONSIDER VARIATIONS OF PARAGRAPH 2(B) OF THE G-77 TEXT (REF A) WHICH WOULD AVOID ANY IMPLICATION THAT AGREEMENTS CAN BE VIOLATED IF NECESSARY TO SAFEGUARD SOVEREIGNTY OR DEVELOP NATIONAL ECONOMY. ONE SUCH FORMULA MIGHT BE "IN ORDER TO DEVELOP THE NATIONAL ECONOMY OF THE HOST STATE, AND CONSISTENT WITH ITS NATIONAL SOVEREIGNTY, TO ENTER FREELY INTO INVESTMENT AGREEMENTS RELATING TO THE IMPORT OF FOREIGN CAPITAL, WHICH AGREEMENTS SHALL BE OBSERVED IN GOOD FAITH." INGERSOLL

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